

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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DIEGO HEREDIA,

Plaintiff,

- against -

NOTICE OF REMOVAL

Case No. # 18 Civ _____

Law Dept. No.: 2019-055961

THE CITY OF NEW YORK, THE NEW YORK CITY POLICE
DEPARTMENT, A.D.A. ZACHARY WEINTRAUB, P.O.
BRIAN WILSON, DET. THOMAS DONEGAN, DET.
THOMAS COZART AND P.O. JOHN DOES nos. 1-20 (names
being fictitious, as actual names unknown),

Defendants.
-----X

**TO: THE UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK**

Defendants THE CITY OF NEW YORK and THE CITY OF NEW YORK SUED
HEREIN AS "THE NEW YORK CITY POLICE DEPARTMENT" (hereinafter "the City"), by
and through its attorney, Georgia M. Pestana, Acting Corporation Counsel of the City of New
York, respectfully shows this Court as follows:

1. On July 8, 2019, Plaintiff Diego Heredia commenced the above-captioned civil
action in the Supreme Court of the State of New York, Queens County, of which a trial has yet to
be held. A copy of plaintiff's Summons and Complaint is annexed hereto as "Exhibit A."

2. On August 19, 2019, upon information and belief THE CITY OF NEW YORK
and THE NEW YORK CITY POLICE DEPARTMENT received a Summons and Complaint by
personal service in the above-entitled action, pending in the Supreme Court of the State of New
York, County of Queens, under Index No. 177882/2019, naming the City of New York, the New
York City Police Department, Assistant District Attorney Zachary Weintraub, P.O. BRIAN

WILSON, DET. THOMAS DONEGAN, and DET. THOMAS COZART as defendants therein, and setting forth the claims for relief upon which the action is allegedly based.

3. Upon information and belief, on August 20, 2019, A.D.A. ZACHARY WEINTRAUB of the Manhattan District Attorney's Office, who the Office of the Corporation Counsel does not currently represent, was served with a Summons and Verified Complaint at One Hogan Place, in the above-entitled action.

4. Copies of the Affidavits of Service concerning service of the Summons and Complaint on THE CITY OF NEW YORK, THE NEW YORK CITY POLICE DEPARTMENT, and A.D.A. ZACHARY WEINTRAUB are annexed collectively hereto as "Exhibit B."

5. Upon information and belief, the individually named police officers - P.O. BRIAN WILSON, DET. THOMAS DONEGAN, and DET. THOMAS COZART – have not been served with the Summons and Complaint in this action to date.

6. Plaintiff brings this lawsuit pursuant to 42 U.S.C. § 1983 alleging, *inter alia*, federal claims of false arrest, malicious prosecution, abuse of process, and municipal liability, all in violation of the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution. See Exhibit A. Plaintiff also asserts state law claims for false arrest and malicious prosecution, as well as claims for negligent infliction of emotional distress, intentional infliction of emotional distress, and negligent hiring, training, retention, and supervision. See id.

7. The above-captioned action is a civil action of which the United States District Court has original jurisdiction pursuant to 28 U.S.C. § 1331 in that it includes causes of action against defendants which arise under the Constitution and laws of the United States. This action is therefore removable to the United States District Court without regard to the citizenship or residence of the parties pursuant to 28 U.S.C. § 1441(b).

8. Furthermore, since the state law claims within plaintiff's Complaint arise out of a common nucleus of operative facts, namely the allegedly condoned police conduct involved during plaintiff's alleged false arrest and malicious prosecution, both state and federal claims form part of the same case and controversy under Article III of the United States Constitution, and therefore this Court's exercise of supplemental jurisdiction is appropriate. See Rosario v. Amalgamated Ladies' Garment Cutters' Union, 605 F.2d 1228, 1247 (2d Cir. 1979) (both state and federal claims were linked by the hostility of Union officials toward appellees' assertion of their § 101 rights); see also Dunlop v. City of New York, 2006 U.S. Dist. LEXIS 72315 (S.D.N.Y. 2006) (plaintiff's state and federal claims arise out of a common nucleus of operative facts).

9. This Notice of Removal is timely because it is being filed within thirty (30) days of receipt of the initial pleading by the City and the New York City Police Department. See 28 U.S.C. § 1446(b).

10. Furthermore, although not currently represented by the Office of the Corporation Counsel and upon information and belief not served to date, all individually named defendant police officers consent to the action's removal to federal court.


11. The named defendant A.D.A. ZACHARY WEINTRAUB, who is not represented by the Office of the Corporation Counsel, also consents to the removal of this action of the United States District Court for the Eastern District of New York. A copy of the Consent to Removal Form of A.D.A. Zachary Weintraub is annexed hereto as "Exhibit C."

12. While not served to date, defendants P.O. BRIAN WILSON, DET. THOMAS DONEGAN, and DET. THOMAS COZART consent to the removal of this action of the United States District Court for the Eastern District of New York. A copy of the Consents to Removal

WHEREFORE, defendants City of New York and the New York City Police Department respectfully request that the above-captioned action be removed from the Supreme Court of the State of New York, County of Queens, to the United States District Court for the Eastern District of New York.

Dated: New York, New York
September 12, 2019

GEORGIA M. PESTANA
Acting Corporation Counsel of the City of New
York
*Attorney for Defendants THE CITY OF NEW YORK
and THE NEW YORK CITY POLICE
DEPARTMENT*
100 Church Street
New York, New York 10007


By: Sarah Gilbert
Assistant Unit Chief
CALEB J. FLEURANT
Assistant Corporation Counsel
(212) 356-4367

BY MAIL:

TO: JOSEPH W. MURRAY, ESQ.
NORA CONSTANCE MARINO, ESQ.
Attorneys for Plaintiff
125-10 Queens Boulevard, Suite 5
Kew Gardens, NY 11415

DISTRICT ATTORNEY OF THE COUNTY OF NEW YORK
Attorney for Defendant A.D.A. Zachary Weintraub
One Hogan Place
New York, NY 10013
(212) 335-9000

P.O. BRIAN WILSON
One Police Plaza
New York, NY 10038

DET. THOMAS DONEGAN
One Police Plaza
New York, NY 10038

DET. THOMAS COZART
One Police Plaza
New York, NY 10038

AFFIRMATION OF SERVICE

STATE OF NEW YORK, COUNTY OF NEW YORK, SS:

The undersigned, an attorney admitted to practice in the courts of New York State, shows that he is over 18 years of age and not a party to this action, he is employed in the office of the Corporation Counsel of the City of New York, and affirms this statement to be true under the penalties of perjury pursuant to Rule 2106 CPLR:

That on the 12th day of September, 2019, he served the annexed CIVIL COVER LETTER upon:

JOSEPH W. MURRAY, ESQ.
NORA CONSTANCE MARINO, ESQ.
Attorneys for Plaintiff
125-10 Queens Boulevard, Suite 5
Kew Gardens, NY 11415

being the address within the State theretofore designated by them for that purpose by depositing a copy of the same, enclosed in a prepaid wrapper in a post office box situated in the Borough of Manhattan, City of New York, regularly maintained by the Government of the United States.

Dated: New York, New York
September 12, 2019



ACC CALEB FLEURANT

AFFIRMATION OF SERVICE

STATE OF NEW YORK, COUNTY OF NEW YORK, SS:

The undersigned, an attorney admitted to practice in the courts of New York State, shows that he is over 18 years of age and not a party to this action, he is employed in the office of the Corporation Counsel of the City of New York, and affirms this statement to be true under the penalties of perjury pursuant to Rule 2106 CPLR:

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JOSEPH W. MURRAY, ESQ.
NORA CONSTANCE MARINO, ESQ.
Attorneys for Plaintiff
125-10 Queens Boulevard, Suite 5
Kew Gardens, NY 11415

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Dated: New York, New York
September 12, 2019



ACC CALEB FLEURANT